

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

VC MACON, GA LLC,

Plaintiff,

v.

VIRGINIA COLLEGE LLC,

Defendant.

:
:
:
:
:
:
:
:
:
:
:
:

CIVIL ACTION NO.
5:18-cv-00388-TES

RECEIVER'S THIRD REPORT

COMES NOW, John F. Kennedy, Receiver in the above-styled action pursuant to the *Order Appointing Temporary Receiver and Granting Preliminary Injunction* (Doc. 26, "Appointment Order") filed on November 14, 2018, and hereby files his third Receiver's report ("Third Report") pursuant the Appointment Order, respectfully showing the Court as follows:

I. INTRODUCTION

On November 14, 2018, the Court entered the Appointment Order which appointed John F. Kennedy, Esq. as the receiver (the "Receiver")¹ for Education Corporation of America, Virginia College, LLC ("VC"), and New England College of Business and Finance, LLC ("NECB," together with Education Corporation of America and VC, "ECA"), with respect to all the business, business interests, and property of ECA (the "Receivership Estate").

The Appointment Order required the Receiver to report to this Court and the parties information regarding and describing the Receivership Estate within sixty (60) days after the entry of the Appointment Order, then every thirty (30) days following. Doc. 26, p. 7. On December 12, 2018, however, the Receiver filed an initial report (Doc. 99, the "Initial Report")

¹ Receiver may refer to Mr. Kennedy or a member of his receivership team.

due to the significant hardships and substantial changes ECA had experienced since the Receiver's initial appointment. The Receiver filed his second report on January 14, 2019, and has now properly filed this Third Report within the requirements set forth in the Appointment Order.

II. DISCUSSION

1. NECB Sale Process

On January 22, 2019, this Court granted the Receiver's Motion (Doc. 140) to sell substantially all assets of NECB, and established the Receiver's sale procedures for the sale of NECB. Doc. 142. As of February 8, 2019, the Receiver's investment banker, Carl Marks Advisors Group ("CMAG"), has contacted forty-two potential purchasers. Thirteen parties have received access to the NECB data room and are continuing to perform their due diligence, while twelve parties have received the NECB teaser and/or NDA. CMAG has identified one hundred and thirteen additional targets and has begun to make contact with these targets regarding the NECB opportunity.

Based on the recommendation of CMAG and the Receiver's professionals, the Receiver filed his Motion to Amend the Bid Procedures (Doc. 152), on February 14, 2019. As set forth in greater detail in the motion, the Receiver respectfully request that the Court extend or modify certain deadlines set forth in the original Order granting the NECB sale procedures (Doc. 142). This extension and modification of dates is to allow CMAG additional time to continue negotiations with multiple potential bidders and to continue to market NECB to maximize the potential value for the Receivership Estate. The amended timeline that has been requested for approval is attached to the Third Report as "Exhibit A".

2. Approved Disbursements and Cash Flow Forecast

The Receiver has approved certain disbursements since the filing of the Receiver's Second Report. From January 7, 2019 through February 1, 2019, the Receiver has authorized \$1,927,273.00 in approved requested disbursements. These disbursements are broken down into three categories: payables, student stipends, and payroll. The approved payables consisted of benefit premiums, rent payments for the two remaining ECA facilities, retainers for the restructuring professionals, and other expenses. The requested disbursements were calculated by ECA's financial and accounting departments, and then reviewed by the Receiver's financial professionals before being approved. Attached to the Third Report as "Exhibit B" is the Requested Disbursements Authorization.

Attached to the Second Report as "Exhibit C" is a Revised Cash-Flow Projection. This thirteen-week projection illustrates the funds available to continue funding and operating NECB, in addition to other ordinary wind-down expenses. According to the cash-flow forecast, ECA is projected to have a positive ending cash balance at the conclusion of the thirteen weeks. This positive ending cash balance is contingent on several factors, including but not limited to, the time period for a successful sale process for NECB as detailed in the Order granting the NECB sales procedures (Doc. 142), and the Department of Education ("ED") approving Title IV funds for NECB. It is important to note a positive variance in the ending cash balance from this current Cash-Flow Projection from the previous projection filed with the Court on January 14, 2019. *Compare* Exh. C with *Receiver's Second Report*, Doc. 130, Exh. B. This positive variance is due in part to timing differences of certain projected expenses and an increase of inflows through refunds and student account receivables.

The Receiver has continued to communicate with ED regarding outstanding items and ECA's additional requests for funds. Per ED's requests, auditors have reviewed ECA's student

ledgers and financial documents regarding NECB's request for federal funds. The Receiver anticipates submitting NECB's federal funding request to ED next week.

3. Continued Operations of the Receivership Estate

The Receiver has continued to wind-down the operations of ECA. The Receiver reviewed bid proposals from two third-party accounting firms in preparation of filing ECA's taxes. Upon this review, the Receiver has engaged Princeton Financial Group, LLC ("PFG") to prepare and file ECA's taxes. Due to the high cost to perform an outside official financial audit, and there not being a regulatory requirement to complete an official financial audit as ECA is no longer an ongoing operation, the ECA accounting team has already completed the unofficial financial audit for 2018.

ECA has substantial amounts of outstanding account receivables. These outstanding account receivables are in the form of private student debt owed directly to ECA. Prior to the appointment of the Receiver, some accounts were not actively being collected due to there being no activity in over a year and no payment plan being in place. Portions of the account receivables have been placed with third-party collectors that bring in funds for the Receivership Estate each month. There is a remaining portion of the accounts that are not finalized yet due to the reconciliations that must take place. The Receiver anticipates that the final reconciliations will be concluded by mid-March, at which time the total amount of account receivables will be determined.

Additionally, the Receiver has taken several actions for the benefit of the Receivership Estate. VC was the owner of a commercial property in Semmes, Alabama, that was used as a welding school when VC was operational. After interviewing several regional real estate brokers, the Receiver has engaged NAI Mobile, LLC to serve as the broker for the property. The Receiver

anticipates filing a motion to approve the sale process for this property, similar to the motion the Receiver filed regarding NECB, soon.

The Receiver has also cooperated with numerous state and federal government entities regarding the status of the Receivership Estate. On January 7, 2019, the Office of the Alabama Attorney General (“Alabama AG”) issued a subpoena to VC requesting documents and information related to former students of VS’s on-line school – Virginia College On-Line. The Receiver has worked with the Alabama AG to produce the requested documents and information while also complying with ECA’s obligations to protect former students’ personal information under the Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U.S.C. § 1232g. The Receiver has also responded to a letter signed by U.S. Senator Warren and U.S. Representatives Suzanne Bonamici and Elijah Cummings requesting certain responses and documents regarding the events leading up to ECA’s cease of operations. Additionally, the Receiver has worked with numerous state accreditors and attorney generals’ offices regarding the preservation of students’ records and transcripts, along with additional student concerns. Through these discussions, information regarding the process for students to request their transcripts, along with additional helpful information, has been supplemented and added to ECA’s website.

II. RECOMMENDATION

It is the Receiver’s recommendation that ECA continue to remain in federal receivership. As noted above, the Receiver continues to wind-down ECA while actively working, pursuant to the Court’s Order, to sell NECB. The Receiver anticipates filing a motion to approve the sale procedures for the remaining commercial property located in Semmes, Alabama, and has already filed a motion to amend NECB’s sale procedures. Additionally,

pursuant to the Court's Scheduling Order (Doc. 148) the Receiver will file his motion to approve the claims administrative process on February 15.

Respectfully submitted this 14th day of February, 2019.

/s/ James F. Banter

JOHN F. KENNEDY, Court Appointed Receiver
Georgia Bar No. 414830
JAMES F. BANTER
Georgia Bar No. 581797
Counsel to John F. Kennedy, Receiver

JAMES-BATES-BRANNAN-GROOVER-LLP

231 Riverside Drive

P. O. Box 4283

Macon, Georgia 31208-4283

(478) 742-4280 telephone

(478) 742-8720 facsimile

jkennedy@jamesbatesllp.com

jbaxter@jamesbatesllp.com

CERTIFICATE OF SERVICE

The undersigned certifies that on February 14, 2019, a true and exact copy of the foregoing document has been served on the counsel to the parties by way of filing on CM/ECF.

This 14th day of February, 2019.

/s/ James F. Banter
JAMES F. BANTER
Georgia Bar No. 581797
Counsel to John F. Kennedy, Receiver

JAMES-BATES-BRANNAN-GROOVER-LLP
231 Riverside Drive
P. O. Box 4283
Macon, Georgia 31208-4283
jbanter@jamesbatesllp.com